

**TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE**



FISCAL NOTE

SB 371 - HB 870

March 14, 2011

SUMMARY OF BILL: Adds the commission of a murder for the purpose of promoting, furthering, or assisting the objectives of a criminal gang, or for the purpose of joining a criminal gang to the list of statutory aggravating circumstances that may be considered by a jury in determining whether a sentence of death or life without parole is the appropriate punishment in a first degree murder case.

ESTIMATED FISCAL IMPACT:

**Increase State Expenditures - \$23,000/One-Time
\$257,700/Recurring
Net Impact - \$391,100/Incarceration***

Other Fiscal Impact – An average of one offender per year will receive a death sentence. If a capital offender serves an average of 20 years before the sentence is carried out, there will be no significant additional incarceration costs for the capital offender, apart from the execution. The cost of executing each inmate will exceed \$15,000. The cost to the State of capital trials and appeals is substantially higher than for non-capital cases. It is estimated that the additional cost of capital trials and appeals will exceed \$750,000 for each case.

Assumptions:

- Criminal gang is defined in Tenn. Code Ann. § 40-35-121 as a formal or informal ongoing organization, association, or group consisting of three or more persons that has as one of its activities the commission of criminal acts and two or more members who, individually or collectively, engage in or have engaged in a pattern of criminal gang activity.
- According to the Department of Correction (DOC), the average post-conviction time served for murder one offenses is 25 years and 51 years for life without parole. Estimate assumes one additional admission every year will receive life without parole and one offender every other year will receive the death penalty.

- According to the U. S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. No significant incarceration cost increase will occur due to population growth in this period. The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on two offenders serving an additional 26 years (an increase from 25 to 51 years) and one offender every other year receiving a death sentence (a decrease from 25 years to 20.33 years).
- According to DOC, the average operating cost per offender per day for calendar year 2011 is \$60.62. The cost per conviction in the tenth year is \$221,414.55 (\$60.62 x 3,652.50 days). The total additional operating cost for two offenders in the tenth year is \$442,829.10.
- Tennessee has executed five offenders in the past 10 years after serving an average of 20.33 years. The sentence for life is a 25-year sentence. If one person receives a death sentence rather than life, that person would serve 4.67 years less (25 years – 20.33 years). The incarceration cost for 4.67 years is (1,705.72 days) is \$103,400.75 (\$60.62 x 1,705.72 days). The annualized cost per conviction is \$51,700.38 (0.50 annual number of convictions x \$103,400.75).
- The net impact of this bill is an increase in state expenditures for incarceration of \$391,128.72 (\$442,829.10 - \$51,700.38).
- Public defenders and district attorneys general will require additional resources for trials and appeals of additional death penalty and life without parole cases. Supreme Court Rule 13 requires the appointment of two defense attorneys, with specialized training, in each capital case. Reimbursement rates for appointed defense counsel are higher in capital cases. Due to the nature of capital cases, counsel accepting such cases may be subject to greater limitations on their caseloads, requiring additional attorneys to handle other cases.
- Recurring costs of \$257,700 reflect two additional assistant public defender positions and one assistant district attorney position including \$161,100 (\$53,700 x 3) for salaries, \$74,100 (\$24,700 x 3) for benefits, and \$22,500 for travel, supplies, rent, training, and other related costs.
- One-time costs of \$23,100 for computer equipment, furniture, books, and other related costs for three positions (\$7,700 x 3).
- Tennessee has executed five offenders in the past ten years. The cost of each execution is estimated to be in excess of \$15,000.
- The State incurs substantial out-of-pocket expenses in capital trials, appeals and post-conviction proceedings. These include the costs of appointed counsel, expert witnesses, investigators, and mitigation specialists. These additional costs are estimated to exceed \$750,000.
- Any impact on caseloads for the state trial courts can be accommodated within existing judicial resources without an increased appropriation or reduced reversion.

**Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



James W. White, Executive Director

/lsc